

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1403 of 2006

Rajendra Publishing House .. Petitioner
versus
Shri Harilal Prajapati & Anr. .. Respondents

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Mr.A.D. Shetty for the petitioner.

CORAM : D.G. KARNIK, J
DATED : 3rd July 2006.

P.C.:

1. This Writ Petition is directed against the award dated 18th June 2005 passed by the Labour Court ordering reinstatement of the respondent no.1.
2. Services of respondent no.1 were terminated without holding an enquiry. When the termination was challenged the petitioner contended that the respondent

was a manager and not a workman and therefore it was not necessary to hold an enquiry. Labour Court rejected that contention and held that the respondent no.1 was a workman. Counsel for the petitioner relied upon the decision of the Supreme Court in Mukesh Tripathi Vs. Sr.Divisional Manager, LIC reported in 2004(93) L.L.J 740, and submitted that the burden of proving that he was a workman was on the respondent no.1 and the respondent no.1 had not discharged the same. The respondent no.1 examined himself and stated on oath that he was a workman. In view of the positive evidence of the respondent no.1 the onus shifted on the petitioner to show that respondent was not a workman. The petitioner did not produce any letter of appointment contending that no letter of appointment was ever issued. It made ambiguous statement in the affidavit in lieu of examination in chief, in which it was stated that respondent no.1 was the sole person running the show. This indicates that there were no workmen employed by the petitioner other than the respondent no.1. The respondent no.1, therefore, was not supervising the work of anybody and working directly under the owner. The petitioner did not adduce any evidence that respondent was delegated with any managerial powers. Duty list was not produced. In

the circumstances, view taken by the Labour Court that the respondent no.1 was a workman is a possible view which cannot be interfered with in exercise of a writ jurisdiction.

3. Counsel for the petitioner submitted that after holding that respondent no.1 was not a workman, Labour Court ought to have allowed an opportunity to the petitioner to justify the order of termination by adducing evidence in support of the order of termination before the Labour Court. Such a request was not made before the Labour Court. In fact, in the written statement, it was stated that petitioner would reserve the right to conduct an enquiry, if necessary. It appears that the submission before the Labour Court was that in case the respondent no.1 was held to be a workman, the respondent no.1 would hold a domestic enquiry, implying thereby that it did not wish to support the order of termination before the Labour Court by adducing evidence but the petitioner wanted to hold a separate domestic enquiry into alleged misconduct of the respondent no.1 in case he was held to be a workman. Even in the exhaustive grounds of challenge (i.e.39 grounds(a) to (mm) taken in the petition, no ground is taken that petitioner wanted to

adduce the evidence before the Labour Court which was not allowed. In the absence of any such ground in the petition, petitioner cannot be allowed to contend that it wanted to adduce evidence before the Labour Court which was denied.

3. There is no merit in the petition which is hereby rejected.

(D.G. KARNIK, J)